

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of
the License of Tracy Stewart to
Provide Family Foster Care

**RECOMMENDED ORDER GRANTING
THE DEPARTMENT'S MOTION
FOR SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Allan W. Klein pursuant to a Notice of and Order for Hearing dated February 21, 2003. On February 27, 2003, the Department of Human Services filed a Motion for Summary Disposition. The Licensee did not submit a response in opposition to the motion. The Administrative Law Judge sent a letter to the Licensee describing the process to respond to the motion and extending the deadline for that response. The time to respond to the motion expired on March 19, 2003, without a reply from the Licensee.

Kerri Stahlecker Hermann, Assistant Attorney General, 445 Minnesota Street, Suite 900, Saint Paul, Minnesota 55101-2127, represents the Department of Human Services ("DHS" or "the Department"). The Licensee, Tracy Stewart, 6915 Humboldt Avenue North, Minneapolis, Minnesota 55430, submitted no reply to the motion.

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RECOMMENDED that the Motion for Summary Disposition filed by the Department of Human Services be GRANTED.

Dated: April 4, 2003.

/s/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

This Order is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommended Order of the Administrative Law Judge. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Recommended Order has been made available to the parties to the proceeding for at least ten days and an opportunity has

been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155; telephone 651-296-2701, for further information regarding the filing of exceptions and the presentation of argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Recommended Order will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Recommended Order and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

In this contested case proceeding, Tracy Stewart has appealed the decision by the Department to revoke her family foster care license. The Department has moved for summary disposition on the grounds that there are no material issues of fact in dispute and it is entitled to disposition of this case in its favor as a matter of law. Summary disposition is the administrative equivalent of summary judgment.^[1] Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.^[2] A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.^[3]

The moving party must demonstrate that no genuine issues of material fact exist.^[4] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.^[5] The existence of a genuine issue of material fact must be established by substantial evidence; general averments are not enough to meet the nonmoving party's burden.^[6] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.^[7] The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.^[8]

Factual Background

Based upon the materials submitted by the Department, it appears that the facts in this matter relevant to the Motion for Summary Disposition are as follows. The Licensee holds a foster care license issued by the Department. As part of the ongoing licensing process, a background study was conducted with respect to all persons over the age of 13 who were living in the Licensee's household. Based upon the results of

the study, the Licensee was found to be disqualified from direct contact with persons served by DHS-licensed programs.^[9] The disqualification was based upon the Licensee's conviction for fifth degree assault on September 7, 2001.^[10] The Licensee did not request reconsideration of the disqualification.^[11]

On September 6, 2002, the Licensee was notified that her family foster care license was being revoked by the Department due to the disqualification.^[12] The Department's Order of Revocation informed the Licensee that she had a right to appeal the revocation under Minnesota Statutes Chapter 14.^[13] The Licensee requested an appeal of the revocation on September 17, 2002.^[14] The Department issued a Notice of and Order for Hearing in this matter on February 21, 2003.

The Department filed its motion for summary disposition on February 27, 2003. By letter to the Licensee dated March 3, 2003, the Administrative Law Judge explained the nature of a motion for summary disposition and gave the Licensee an opportunity to send a response by March 19, 2003. The Judge indicated in the letter that, "[i]f you disagree with the facts set forth in the four exhibits attached to Ms. Hermann's filing, or if you disagree with her legal analysis as set forth in her Memorandum, you should respond to me, in writing, indicating where you disagree." The Licensee did not submit any response to the Department's motion.

Arguments and Analysis

In its motion for summary disposition, the Department maintains that disqualification was required under Minn. Stat. § 245A.04, subd. 3d(a), due to the Licensee's assault conviction. The Department cites Minn. Stat. § 245A.04, subd. 3f(i) through (iii) as rendering the disqualification conclusive where the Licensee has not requested reconsideration of the disqualification.^[15] The Department thus asserts that there are no genuine issues of material fact that have a bearing on the outcome of this case and the Department is entitled to judgment as a matter of law.

The Department's analysis, that a disqualification for which reconsideration is not requested is not otherwise reviewable, is correct. This approach to disqualifications is supported by Minn. Stat. § 245A.04, subd. 3c, which states in pertinent part:

(b) If a disqualification **for which reconsideration was requested** and which was not set aside or was not rescinded under subdivision 3b is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules.

* * *

As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, the disqualification, and the licensing sanction or denial of a license. In such cases, a fair hearing shall not be conducted under section 256.045.^[16]

The Licensee's entitlement to a contested case hearing under the circumstances of this matter is conditioned on a request for reconsideration of her disqualification. Since the Licensee did not request reconsideration, the disqualification is not reviewable here.

There is no genuine issue of material fact remaining for hearing and the Department is entitled to prevail as a matter of law. Accordingly, it is recommended that the Department's order revoking Tracy Stewart's family foster care license be affirmed.

A.W.K.

^[1] Minn. R. 1400.5500 (K).

^[2] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03; Minn. R. 1400.5500 (K).

^[3] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).

^[4] *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

^[5] *Highland Chateau*, 356 N.W.2d at 808; *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).

^[6] *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[7] *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

^[8] See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).

^[9] DHS Exhibit 1.

^[10] DHS Exhibit 1.

^[11] DHS Exhibits 2 and 3.

^[12] DHS Exhibit 4.

^[13] *Id.*

^[14] DHS Exhibit 5.

^[15] DHS Memorandum, at 3-4.

^[16] Minn. Stat. § 245A.04, subd. 3c(b)(emphasis added).